

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE

ANIMAL SERVICES DIVISION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3268.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 28, 2012.

[R12-242]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
R3-2-202 Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 3-107(A)(1) and 3-1203(B)
Implementing statute: A.R.S. §§ 3-2046 and 3-2161
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 18 A.A.R. 3263, December 14, 2012 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Rick Mann
Address: 1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-6398
E-mail: rmann@azda.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
The purpose of this rulemaking is to update the incorporated federal regulations to the latest version in order to maintain consistent state status. 9 CFR 392 is a new section that relates to petitions for federal rulemaking and does not need to be part of this rule, so the Department is adding this new section to the list of excluded sections.
The applicable federal regulations in 9 CFR Chapter III have undergone seven rulemakings since January 1, 2009. First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. Second, voluntary rules pertaining to inflating carcasses were amended. Third, a voluntary nutritional labeling program for major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products has become mandatory. Fourth, a voluntary program has been added that allows for certain meat inspected at a state-inspected facility to be sold in interstate commerce. Fifth, the time it takes an inspector to don and doff work clothes now counts toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. The sixth and seventh rulemakings made technical changes to the rules without changing the intended meaning.

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6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

As more fully described in item #5, the rulemaking makes five substantive changes. None of these changes are expected to require any new full-time Department employees. Also, the Department is not able to offer any less intrusive alternatives and still be "at least equal to" federal law.

First, cattle that become non-ambulatory disabled cattle after their antemortem slaughter inspection can no longer be slaughtered for meat for human consumption. The federal government estimated that in 2007 about 1,300 out of 33.7 million cattle nationwide became non-ambulatory disabled cattle after the antemortem slaughter inspection. The federal regulation being adopted by Arizona is designed to bring the nationwide figure of 1,300 down to zero. The purpose of this federal regulation is animal welfare. The federal government estimates that this change will cost the entire beef industry \$930,000 to \$1,370,000 annually, with \$883,000 to \$1,342,600 of that being born by smaller businesses. The federal government also estimates that the annual value of the beef industry is \$8.4 billion. The federal government expects that the beef industry will eventually pass this cost on to consumers. *See* 74 FR 11463-66 (March 18, 2009).

Second, the rulemaking adopts federal amendments to voluntary rules pertaining to inflating carcasses. Because air inflation is voluntary, the federal government believes the federal rule will not have an economic impact. *See* 75 FR 69575-77 (November 15, 2010).

Third, the rulemaking adopts new federal requirements for nutritional labeling of major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products. The federal government tried a voluntary labeling program, but the federal government felt participation levels were too low. The federal government wants consumers to have precise information about fat content per serving so that consumers can make educated choices about consuming covered meat and poultry products. The federal requirements have several exemptions, including for small businesses with respect to labeling ground or chopped products. The federal government estimates the cost of labeling for major cuts to be \$0.0002 per pound and for ground and chopped products to be \$0.006 per pound or less. The federal government also estimates that the cost for retail stores that use point-of-purchase signs instead of product labels will be about \$1,537 annually (per store). *See* 75 FR 82148-67 (December 29, 2010).

Fourth, the rulemaking adopts a new federal voluntary program that allows for certain meat inspected at a state-inspected facility to be sold in interstate commerce. Presently, no meat inspected at a state-inspected facility may be sold in interstate commerce. The federal government estimates that state agencies will need about 40 hours to complete the steps necessary to join the program and another 24 hours per establishment that wants to participate. The federal government also estimates that about 25% of the establishments that wish to participate will need to spend about 16 hours in updating recordkeeping procedures. Since this program is voluntary, businesses don't have to incur any new costs. *See* 76 FR 24714-59 (May 2, 2011).

Fifth, the rulemaking adopts the federal regulation that identifies the time it takes an inspector to don and doff work clothes as time counting toward the inspector's 40 hour work week, thus potentially resulting in 15 minutes of overtime per day per inspector. The state overtime fee is \$19.40 per hour or \$4.85 per 15 minutes. Over 260 work days per year, there would be an overtime charge of \$1,261 per inspector at state inspected facilities. In comparison, federal inspected facilities would pay \$4,462 per inspector per year in overtime. The federal government believes the cost at federal inspected facilities will be passed down to consumers at a rate of \$0.0001 per pound. Facilities have the option of operating 15 minutes less each day to avoid overtime charges, but the revenue generated during those extra 15 minutes exceeds the cost of the overtime. The federal regulation is intended to meet the requirements of federal labor law. *See* 76 FR 33974-80 (June 10, 2011).

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Rick Mann
Address: 1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-6398
E-mail: rmann@azda.gov

10. The time, place, and nature of the proceedings to make, amend, repeal or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A person may request an oral proceeding on the proposed rules by contacting the individual identified in item #4 within 30 days of publication of this notice.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Pursuant to A.R.S. § 3-104(F), the Department will discuss this rulemaking with the ADA Advisory Council prior to adopting the rule.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

9 CFR Chapter III is applicable to this rule. This rule is not more stringent than the federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Most of 9 CFR Chapter III is incorporated by reference in rule 202.

13. The full text of the rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

All meat and poultry inspection and slaughtering procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2009, 2012, except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed at www.gpoaccess.gov/cfr/index.html or purchased from the U.S. Government Online Bookstore at bookstore.gpo.gov; online at www.gpo.gov/fdsys.